

HONORABLE MARSHA J. PECHMAN

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

SUSAN CUSTER, an individual,

Plaintiff,

v.

CHANDLER SMITH and “JANE DOE”  
SMITH, husband and wife and the marital  
community composed thereof, BNSF  
RAILWAY COMPANY, a Delaware  
corporation licensed to do business in the State  
of Washington, and JOHN DOE BUSINESS  
ENTITIES I-V; jointly and severally,

Defendants.

No. 2:20-cv-00757-MJP

**ORDER GRANTING STIPULATION  
FOR CONDUCTING REMOTE  
DEPOSITIONS**

THIS MATTER comes before the court by stipulation of the parties requesting  
Conducting Remote Depositions. IT IS HEREBY ORDERED, as follows:

1. All depositions shall be conducted remotely using video technology, and each  
deponent may be video-recorded.

2. The Parties shall use a licensed court reporting company, such as Veritext, for  
court reporting, videoconference and remote deposition services. An employee or contractor of  
such deposition service may attend each remote deposition to video record the deposition,  
troubleshoot any technological issues that may arise, and administer any virtual breakout rooms.

1           3.       These remote depositions, including the video recordings thereof, may be used at  
2 a trial or hearing to the same extent that an in-person deposition may be used at trial or hearing,  
3 and the Parties agree not to object to the use of these video recordings on the basis that the  
4 deposition was taken remotely. The Parties reserve all other objections to the use of any  
5 deposition testimony at trial.

6           4.       The deponent, court reporter, and counsel for the Parties will each participate in  
7 the videoconference deposition remotely and separately. Each such person attending a deposition  
8 shall be visible to all other participants, their statements shall be audible to all participants, and  
9 they should each strive to ensure their environment is free from noise and distractions. No one  
10 shall be in the room with the deponent.

11           5.       No person, including counsel, shall engage in any private conference with the  
12 witness, including through text message, electronic mail, or the chat feature in the  
13 videoconferencing system, unless and until the deposition is taken off the record. If the need to  
14 determine whether a privilege should be asserted, counsel shall expressly make that  
15 representation, and the parties will go off the record, during which time, that issue, and solely  
16 that issue, may be discussed outside the presence of the other parties.

17           6.       Remote depositions shall be recorded by stenographic means consistent with the  
18 requirements of Federal Rule of Civil Procedure 30(b)(3), but given the COVID-19 pandemic,  
19 the court reporter will not be physically present with the witness whose deposition is being taken.  
20 The Parties agree not to challenge the validity of any oath administered by the court reporter,  
21 even if the court reporter is not a notary public in the state where the deponent resides.

22           7.       The court reporter will stenographically record the testimony, and the court  
23 reporter's transcript shall constitute the official record. If being video recorded, the deposition  
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1 service will simultaneously videotape the deposition and preserve the video recording. The court  
2 reporter may be given a copy of the video recording and may review the video recording to  
3 improve the accuracy of any written transcript.

4 8. The Parties agree that the court reporter is an “Officer” as defined by Federal Rule  
5 of Civil Procedure 28(a)(2) and shall be permitted to administer the oath to the witness via the  
6 videoconference. The deponent will be required to provide government-issued identification  
7 satisfactory to the court reporter, and this identification must be legible on the video record.

8 9. The Party that noticed the deposition shall provide the deposition service with a  
9 copy of this Stipulation and Order at least twenty-four hours in advance of the deposition.

10 10. At the beginning of each deposition, consistent with Federal Rule of Civil  
11 Procedure 30(b)(5)(A), the employee or contractor of the deposition service responsible for  
12 video-recording the deposition shall begin the deposition with an on-the-record statement that  
13 includes: (i) the officer’s name and company affiliation; (ii) the date, time, and place of the  
14 deposition; (iii) the deponent’s name; (iv) the officer’s administration of the oath or affirmation  
15 to the deponent; and (v) the identity of all persons present.

16 11. At the beginning of each segment of the deposition, consistent with Rule  
17 30(b)(5)(B) of the Federal Rules of Civil Procedure, the employee or contractor of the deposition  
18 service responsible for video-recording the deposition shall begin that segment of the remote  
19 deposition by reciting (i) the officer’s name and business address; (ii) the date, time, and place of  
20 the deposition; and (iii) the deponent’s name.

21 12. The Parties shall work collaboratively and in good faith with the deposition  
22 service to assess each deponent’s technological abilities and to troubleshoot any issues at least 48  
23 hours in advance of the deposition so any adjustments can be made. The Parties shall work  
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1 collaboratively to address and troubleshoot technological issues that arise during a deposition  
2 and make such provisions as are reasonable under the circumstances to address such issues. This  
3 provision shall not be interpreted to compel any Party to proceed with a deposition where the  
4 deponent cannot hear or understand the other participants or where the participants cannot hear  
5 or understand the deponent.

6 13. Every deponent shall endeavor to have technology sufficient to appear for a  
7 videotaped deposition (e.g., a webcam and computer or telephone audio), and bandwidth  
8 sufficient to sustain the remote deposition. Counsel for each deponent shall consult with the  
9 deponent prior to the deposition to ensure the deponent has the required technology. If not,  
10 counsel for the deponent shall endeavor to supply the required technology to the deponent prior  
11 to the deposition. In the case of third-party witnesses, counsel noticing the deposition shall  
12 supply any necessary technology that the deponent does not have.

13 14. This Stipulation and Order applies to remote depositions of non-parties under  
14 Rule 45 and the Parties shall work in a collaborative manner in attempting to schedule remote  
15 depositions of non-parties. The Party noticing any third-party deposition shall provide this  
16 Stipulation and Order to counsel for any non-party under Rule 45 a reasonable time before the  
17 date of the deposition.

18 15. Any of the following methods for administering exhibits may be employed during  
19 a remote deposition, or a combination of one or more methods:

- 20 a. Counsel noticing the deposition may choose to mail physical copies of  
21 documents that may be used during the deposition to the deponent, the  
22 deponent's counsel, the other Party's counsel, and the court reporter. In that  
23 event, noticing counsel shall so inform the deponent's counsel, the other  
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1 Party's counsel, and the court reporter prior to mailing the documents and  
2 shall provide tracking information for the package. Such documents shall be  
3 delivered by 12:00 pm PT the business day before the deposition. Counsel for  
4 the deponent, the other Party's counsel, and the court reporter shall confirm  
5 receipt of the package by electronic mail to Counsel noticing the deposition. If  
6 physical copies are mailed, every recipient of a mailed package shall keep the  
7 package sealed until the deposition begins and shall only unseal the package  
8 on the record, on video, and during the deposition when directed to do so by  
9 the counsel taking the deposition. This same procedure shall apply to any  
10 physical copies of documents any other counsel intends to use for examining  
11 the witness.

- 12 b. Counsel noticing the deposition may choose to send a compressed .zip file of  
13 the documents that may be used during the deposition via electronic mail to  
14 the deponent, the deponent's counsel, the other Party's counsel, and the court  
15 reporter. The .zip file shall be delivered by 12:00 pm PT the business day  
16 before the deposition. Counsel for the deponent, the other Party's counsel, and  
17 the court reporter shall confirm receipt of the .zip file by electronic mail to  
18 Counsel noticing the deposition. The .zip file shall be password protected, and  
19 counsel taking the deposition shall supply the password via electronic email  
20 immediately prior to the commencement of the deposition. Every recipient of  
21 a .zip file shall not open the .zip file until the deposition begins and when  
22 directed to do so by the counsel taking the deposition. If sending documents  
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1 by electronic mail, counsel will be mindful of file size limitations, which  
2 presumptively should be less than 50 MB.

3 c. Counsel may introduce exhibits electronically during the deposition, by using  
4 the deposition service document-sharing technology, by using the  
5 screensharing technology within the videoconferencing platform, or by  
6 sending the exhibit to the deponent and all individuals on the record via  
7 electronic mail.

8 16. All deponents receiving documents before or during a deposition, pursuant to  
9 Paragraph 15 above, shall destroy the documents following the deposition, and shall not retain  
10 them in any manner.

11 17. Counsel for the Parties may keep any document or exhibit used during the  
12 deposition. Counsel for the Parties shall destroy any documents not used during the deposition,  
13 following the completion of the deposition, and shall not retain them in any manner.

14 18. Counsel for third-party witnesses may keep any document used during the  
15 deposition, and shall destroy any documents not used during the deposition following the  
16 completion of the deposition, and shall not retain them in any manner.

17 IT IS SO ORDERED this 10th day of November, 2020.

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20 Marsha J. Pechman  
21 United States District Judge  
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Submitted by:

Montgomery Scarp & Chait PLLC

s/ Michael Chait

Michael Chait, WSBA # 48842

1218 Third Ave., Suite 2500

Seattle, WA 98101

Tel. (206) 625-1801

Fax (206) 625-1807

[mike@montgomeryscarp.com](mailto:mike@montgomeryscarp.com)

*Counsel for Defendant*

GLP Attorneys, P.S., INC

s/Sarah Fleming

Sarah Fleming, WSBA #43304

2601 Fourth Avenue, Floor 6

Seattle, WA 98121

Tel. (206) 388-1375

Fax (206) 488-4640

[sfleming@glpattorneys.com](mailto:sfleming@glpattorneys.com)

*Counsel for Plaintiff*